

block front surface such that adjacent blocks may be placed adjacent to one another to define an opening therebetween bounded by adjacent legs and side surfaces on said adjacent blocks.

a 4
cont 34. The structure of claim 33 wherein each of said legs on said block back surface of each block are removable for decreasing the width of said block back surface.--

Remarks

This Amendment and Response is being submitted in reply to the Office Action dated December 6, 1993. A one month extension of time is being submitted concurrently herewith. Therefore, the period for response has been extended up to and includes May 6, 1994. Reconsideration and allowance of all pending claims by the Examiner is respectfully requested.

In the subject Office Action, the Examiner issued a notice of informal application as the Examiner indicated that claim 24 depended on a claim that did not exist. In addition, the Examiner responded to Applicant's election with traverse and made the requirement final, indicating that claims 1-3 and 6-16 were pending on the merits. Of the pending claims, the Examiner rejected claims 8-9, 13-14 and 16, as well as objected to the specification, under 35 U.S.C. § 112, first paragraph for failing to provide an adequate written description of the invention. Furthermore, claims 1-3, 6-17, 10-12 and 15 were rejected under

35 U.S.C. § 103 as being unpatentable over Forsberg '876 in view of Italy 709,599.

Applicant respectfully traverses each of the Examiner's rejections to the extent that they are maintained.

Applicant has amended claims 1, 6 and 9-11, has cancelled claims 8 and 17-24 without prejudice and has added new claims 25-34.

Applicant has also amended the specification to correct a mistaken recitation of the preferred angles between the sides and legs of the block, labeled " α " in Figures 3 and 6. The angles recited at page 9, lines 23-24 of the specification incorrectly denote an angle between the sides and a line perpendicular to the legs. Applicant respectfully submits that this was an obvious error and that the correction is based on an unambiguous review of the drawings.

Applicant has further submitted a proposed drawing change to figure 1 to correct an incorrect reference character.

Notice of Informal Application

First, in the subject Office Action, the Examiner issued a notice of informal application. The Examiner indicated that claim 24 incorrectly depended upon a claim that did not exist (namely, claim 26). Applicant has cancelled claim 24 without prejudice as it was previously withdrawn from consideration by the Examiner. Therefore, Applicant respectfully submits that this notice has now been rendered moot and requests its withdrawal.

Response to Election With Traverse

Second, in the subject Office Action, the Examiner responded to Applicant's election with traverse, indicating that Applicant's traversal was insufficient to overcome the Examiner's requirement. Applicant has now cancelled claims 17-24 without prejudice as these claims were withdrawn from consideration by the Examiner. Applicant maintains the traversal and reserves the right to refile these claims in a future application.

With respect to the Examiner's arguments regarding the insufficiency of Applicant's traversal, the Examiner indicated that no written rationale is required for a species restriction. (Office Action of December 6, 1993, Page 2). Applicant respectfully submits that the Examiner is incorrect with regard to this point. MPEP §§ 808 and 808.01(a) require that the rationale for a species restriction be provided before such a restriction is proper.

§ 112 Matters

Applicant has traversed the Examiner's objection to the specification, and rejection of claims 8-9, 13-14 and 16 under 35 U.S.C. § 112, first paragraph. In particular, the Examiner indicated that the claimed matrix comprising tie backs positioned between the blocks, and the angled insets providing a wall set back at an angle other than vertical, was not described in the specification nor shown in the figures.

With regard to the "tie backs", Applicant respectfully directs the Examiner's attention to page 11, lines 19-24 of the specification, which discuss the use of tie backs in conjunction with the protrusions and insets to secure the retaining wall against fill. With regard to the "set back", Applicant respectfully directs the Examiner's attention to page 10, lines 3-6 and 16-19 of the specification which discuss varying the angle and/or the size of the insets to provide a set back wall. Further, a detailed definition of "set back" is provided at page 3, lines 8-16 of the specification.

Applicant also directs the Examiner's attention to U.S. Patent No. 5,062,610 which has been incorporated by reference in the pending application. In this referenced United States patent, tie backs and set back are disclosed in great detail (see, in particular, figure 9).

Applicant respectfully submits that the specification as originally filed provides an adequate written description of the claimed features of the invention. Reconsideration by the Examiner is therefore respectfully requested.

§ 103 Matters

Applicant has also traversed the Examiner's rejection of claims 1-3, 6-7, 10-12 and 15 were rejected under 35 U.S.C. § 103 as being unpatentable over Forsberg in view of Italy 709,599. The Examiner has asserted that Forsberg teaches a composite masonry block having similar features including pins protruding

from the top block surface. The examiner has also noted that the pins are adapted to fit within recesses on the bottom surface of an adjacent overlying block thereby providing an engagement means between blocks.

The Examiner has admitted that Forsberg lacks insets on the side surfaces spanning from the top surface to the bottom surface.

Italy 709,599, has been cited for teaching a block having a pair of protrusions located on a top surface adjacent insets located on side surfaces providing an engagement means between one of the blocks and an adjacent overlying block of similar construction. The Examiner has asserted that it would have been obvious to substitute the protrusion and inset engagement means of Italy 709,599 for the pins of Forsberg.

The claimed invention includes insets that extend inward from the side surfaces of the block and protrusions for mating with an inset on a second, similarly configured block. Neither publication, taken individually, or in combination discloses the claimed invention.

Forsberg generally discloses a retaining wall system which relies upon pins and recesses to engage adjacent overlying blocks. Forsberg lacks insets on the side surfaces spanning from the top surface to the bottom surface. In addition, by teaching a system which relies on metal pins to secure adjacent overlying blocks, Forsberg expressly teaches away from a pinless block system.

The Examiner relies on Italy 709,599 for teaching the insets of Applicant's invention. The "insets" which the Examiner relies upon are recesses 8 (seen in Fig. 8 of Italy 709,599). However, these recesses do not function as insets for mating with a protrusion on another block. Consequently, Italy 709,599 does not teach or suggest Applicant's claimed insets. Applicant believes that the Examiner may be misconstruing the disclosure of Italy 709,599. To facilitate the Examiner's understanding of this reference, Applicant has enclosed herewith a translation thereof.

As discussed at page 5 of the translation, recesses 8 are not used for cooperatively mating with a protrusion on an adjacent overlying block. Rather, these recesses form continuous channels with recesses 9 formed in each of the blocks so that mortar may be injected into the channels. Instead, holes 2, which are disposed entirely within the interior portion of the blocks are used to mate with fins 4 that project from the upper face of each block.

Therefore, neither of the cited references discloses Applicant's claimed insets which (1) extend into side surfaces of the blocks and (2) are for mating with a protrusion from a second, similarly configured block. Further, both of these references require some form of additional engagement structure (i.e., pins in Forsberg, and mortar in Italy 709,599) to secure each of the blocks in place. Applicant therefore respectfully

submits that neither of these references, alone or in combination, renders Applicant's invention obvious.

Applicant respectfully submits that claims 1 and 10, as well as claims 2-3, 6-9 and 11-16 which depend therefrom, are novel and non-obvious over the prior art of record. In addition, given that claim 1, as amended, is generic with respect to the various species noted by the Examiner, Applicant also submits that claims 4 and 5 are also patentable over the prior art of record. Reconsideration and allowance of all pending claims is therefore respectfully requested.

New Claims

Applicant has also added new claims 25-34. Claims 25 and 30 are directed to Applicant's feature of defining the area of each inset to be larger than the area of the corresponding protrusion (discussed at page 10, lines 9-19 of the specification). Claims 26 and 31 are directed to Applicant's feature of providing insets which extend into the center portion of the block in a direction which is generally parallel to the block front surface, and with the protrusion interposed on the top surface between these insets (shown in Fig. 1). Claims 27 and 32 are directed to Applicant's kidney shaped protrusion (shown in Fig. 1). Claims 28 and 33 are directed to the openings defined between adjacent blocks (discussed at page 12, line 19 to page 13, line 3). Claims 29

and 34 are directed to providing removable legs for decreasing the width of the block back surface (discussed at page 14, lines 7-15). Applicant respectfully submits that none of the claimed features of the new claims is taught or suggested by any of the prior art of record, and that each of the features is adequately supported in the disclosure as filed. Consideration and allowance of these claims is respectfully requested.

Conclusion

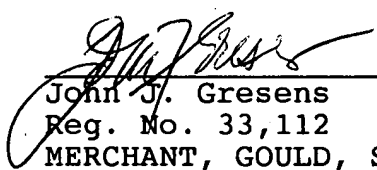
As Applicant's claims are directed to an invention which is novel and non-obvious over the references cited by the Examiner, consideration and allowance of all pending claims is respectfully requested. If the Examiner has any questions regarding this amendment and response, or which might otherwise further this case onto allowance, the Examiner is respectfully directed to contact Applicant's attorney, John J. Gresens at 612-298-1055.

Respectfully submitted,

MICHAEL E. WOOLFORD

By his attorneys,

5/6/54
Date



John J. Gresens
Reg. No. 33,112
MERCHANT, GOULD, SMITH, EDELL,
WELTER & SCHMIDT, P.A.
1000 Norwest Center
55 East Fifth Street
St. Paul, Minnesota 55101-2701
Telephone: (612) 298-1055

